IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,	)	
	)	
v.	)	
	)	Crim. No. 17-201-01 (ABJ)
PAUL J. MANAFORT, JR.,	)	
	)	
Defendant.	)	

DEFENDANT PAUL J. MANAFORT, JR.'S SENTENCING MEMORANDUM

Defendant Paul J. Manafort, Jr. comes before the Court for sentencing after having pled guilty to one count of "conspiracy against the United States" and one count of conspiracy to obstruct justice. Mr. Manafort submits this sentencing memorandum to aid the Court in determining an appropriate sentence under 18 U.S.C. § 3553(a). The U.S. Probation Office ("Probation") has calculated, under the U.S. Sentencing Guidelines (the "Guidelines"), a sentencing range of 188 to 235 months in prison. The two counts of conviction, however, carry a statutorily authorized maximum term of imprisonment of 60 months as to each Count.

INTRODUCTION

Mr. Manafort, who over the decades has served four U.S. presidents and has no prior criminal history, is presented to this Court by the government as a hardened criminal who "brazenly" violated the law and deserves no mercy. But this case is not about murder, drug cartels, organized crime, the Madoff Ponzi scheme or the collapse of Enron. Rather, at its core, the charges against the defendant stem from one operable set of facts: Mr. Manafort made a substantial amount of income working as a political consultant in Ukraine, he failed to report to the government the

source and total amount of income he made from those activities, and he attempted to conceal his actions from the authorities. He has accepted full responsibility by pleading guilty to this conduct.

As the government itself notes, Mr. Manafort committed "garden-variety crimes" and violated the "more esoteric" Foreign Agents Registration Act ("FARA"). *See* Special Counsel Sentencing Submission ("SCO Memo.") at 1. Importantly, the defendant has *not* been charged with any crimes related to the primary focus of the Special Counsel's investigation; *i.e.*, "any links and/or coordination between the Russian government and individuals associated with the campaign of President Donald Trump[,]" otherwise referred to as "Russian collusion" by the national media. Nevertheless, these "garden-variety" and "esoteric" offenses have led to Mr. Manafort being widely vilified in a manner that this country has not experienced in decades.[1]

Indeed, it is fair to say that, but for the appointment of the Special Counsel and his Office's decision to pursue Mr. Manafort for a rarely prosecuted FARA violation, Mr. Manafort would not have been indicted in the District of Columbia. To be clear, Mr. Manafort has acknowledged that he should have filed disclosure forms under FARA, and he accepts full responsibility for his actions. As the Court is aware, however, prior to the May 2017 appointment of the Special Counsel, the National Security Division ("NSD") of the Department of Justice ("DOJ") had been examining the matter which, based on the DOJ's previous practice of handling FARA violations (discussed below), would likely have resulted in Mr. Manafort registering with the NSD for his past transgressions. In fact, Mr. Manafort had already agreed with the NSD to do so when the Special Counsel took over the case. With the appointment of a special prosecutor, however, this

[1] *See, e.g.*, Martin London, *Spiro Agnew's Lawyer: How the Russia Leaks Could Backfire in Court*, Time.com (June 7, 2017) (*available at*: http://time.com/4808890/donald-trump-russia-investigation-leaks/).

FARA violation went from what was historically an administrative inquiry and proceeding to a federal criminal case and the public vilification of the defendant.[2]

Consider: This is only the seventh criminal FARA case brought since 1966. In addition, for the first time in the history of the enforcement of the FARA statute, the government has used the failure to file FARA registration forms as the predicate to charge a money laundering conspiracy—transmogrifying a traditional regulatory violation into a substantially more serious offense accompanied by a potentially severe sentence under that statute.[3] This case, therefore, involves a magnitude of harshness previously unknown in the enforcement of FARA.

Other cases related to Mr. Manafort's work in Ukraine have been handled administratively and resolved as civil matters. Mr. Manafort's own work in Ukraine was known to the highest levels of the United States government and disclosed in articles by major new organizations.[4] As said at the beginning of the case, there is no evidence of Russian collusion. Mr. Manafort's work involved interests outside of Russia and his efforts to help Ukraine attain membership in the European Union was to further the interests of Ukrainian oligarchs who were trying to protect their assets from Russia.

[2] Hyperbole in news stories, of course, cannot be controlled. But the government sentencing memorandum clearly seeks to paint Mr. Manafort as a hardened criminal. Again, this case involves no fraud on individuals or pension plans, no violence or drugs, and the defendant is an individual with no prior criminal record.

[3] The decision to charge a money laundering conspiracy triggered the application of the money laundering Guidelines, which provide for a far more severe sentence than the FARA violation.

[4] S*ee, e.g.*, Clifford J. Levy, *Ukrainian Prime Minister, Once Seen as Archvillain, Reinvents Himself*, N.Y. TIMES, Sept. 30, 2007, at A8.

Mr. Manafort has been punished substantially, including the forfeiture of most of his assets. In light of his age and health concerns, a significant additional period of incarceration will likely amount to a life sentence for a first time offender.

BACKGROUND

For nearly his entire career, Mr. Manafort worked for elected officials and public office seekers. Over the course of four decades, he operated businesses engaged in political consulting and government affairs work in the United States and around the globe. Mr. Manafort served as a high-level advisor to numerous U.S. presidents, going back to President Gerald Ford. He worked hard and was proud of what he achieved. Mr. Manafort's career culminated in serving as an advisor and campaign chairman for then-candidate Donald J. Trump's successful presidential campaign in 2016.

Shortly after Mr. Trump's election, the Acting Attorney General appointed the Special Counsel in May 2017 to investigate allegations that his campaign colluded with the Russian government to influence the 2016 election. The scrutiny was (and remains) intense because the investigation involves a sitting U.S. president. Not surprisingly, advisors of the candidate were the most closely investigated persons. Further, not only was the Special Counsel's Office conducting its grand jury investigation of the allegations, but numerous Congressional committees were pursuing their own examinations. Mr. Manafort was voluntarily cooperating with these Congressional inquiries during the summer of 2017.

Things changed dramatically for the defendant in July 2017. Just two months after the Special Counsel's appointment, more than a dozen armed federal agents conducted a pre-dawn search of Mr. Manafort's Alexandria, Virginia, residence. Rousing the defendant and his wife from bed, the federal agents entered their home with guns drawn and searched high and low—not

for evidence of Russia collusion—but rather for evidence of tax and financial crimes and Mr. Manafort's failure to file forms under the obscure FARA statute. Meanwhile, substantial assets were frozen by the government, thus limiting Mr. Manafort's ability to pay his obligations. Such harsh tactics are usually employed in organized crime cases, not tax investigations or cases involving allegations that the defendant failed to file a form identifying lobbying activities. Most certainly, such tactics are not employed when the person is cooperating with the government's inquiries, as Mr. Manafort was with the congressional examinations. All of these actions occurred prior to any formal charges being lodged and the government's forceful maneuvers had their intended effect; *i.e.*, to dramatically ratchet up the pressure on Mr. Manafort.

In October 2017, unable to establish that Mr. Manafort engaged in any Russia collusion, the Special Counsel's Office charged Mr. Manafort in the District of Columbia with crimes that did not relate to Mr. Manafort's work on the 2016 U.S. presidential campaign and generally involved his employment years ago by Ukrainian oligarchs, politicians and the Party of Regions. Several months later, in February 2018, the Special Counsel increased the pressure by charging Mr. Manafort in the Eastern District of Virginia (EDVA) with tax fraud, failing to report foreign bank accounts, and bank fraud—allegations, once again, that predated the 2016 campaign or that were unrelated to collusion between Mr. Trump's campaign and the Russian government.[5]

On June 15, 2018, the Special Counsel brought new allegations in this District that Mr. Manafort conspired with Konstantin Kilimnik, who was an employee of his for many years, to obstruct justice by reaching out to potential witnesses in Europe. The government sought to have

[5] As U.S. District Judge T.S. Ellis, III noted in the EDVA matter, the Special Counsel's strategy in bringing charges against Mr. Manafort had nothing to do with the Special Counsel's core mandate—Russian collusion—but was instead designed to "tighten the screws" to compel Mr. Manafort to cooperate and provide incriminating information about others. *See United States v. Manafort*, 18-CR-0083-TSE (EDVA), Tr. of May 4, 2018 Motions Hearing at 5.

Mr. Manafort's bail revoked, and this Court agreed and revoked his bail. The defendant has since been incarcerated in protective solitary confinement for close to nine months.

On July 31, 2018, Mr. Manafort exercised his constitutional right to a trial by jury and proceeded to trial in Virginia. On August 21, 2018, the jury found Mr. Manafort guilty on eight counts: subscribing to false income tax returns (Counts 1-5), failure to report his interest in foreign financial accounts (Count 12), and bank fraud (Count 25 and Count 27). The Court in EDVA declared a mistrial on the majority of the other counts (Counts 11, 13-14, 24, 26, and 28-32), which were subsequently dismissed without prejudice.

Shortly after his conviction in Virginia, Mr. Manafort entered a plea of guilty to a superseding information filed in this District. In his plea agreement, Mr. Manafort accepted responsibility for the two conspiracy charges before this Court, acceded to a substantial (multi-million dollar) forfeiture order, and admitted his guilt with respect to the conduct underlying the remaining charges in the EDVA case. Mr. Manafort also agreed to cooperate with the Special Counsel's Office in its investigation and met with attorneys and investigators from the government on numerous occasions. He also testified before a grand jury in the District of Columbia on two occasions.

Mr. Manafort is *not* the "brazen" criminal that the Special Counsel paints him to be. As noted above, the charges against the defendant stem from one operable set of facts: Mr. Manafort made a substantial amount of income working as a political consultant in Ukraine and he failed to report to the government the source and amount of all of the income that he made from those activities. He subsequently attempted to conceal his actions from the authorities. To be clear: earning income from political consulting in foreign countries like Ukraine is legitimate in and of itself, and many skilled advisors and campaign managers on both sides of the political spectrum

do so. What made Mr. Manafort's conduct illegal in this regard was that he failed to file disclosure forms under FARA, which would have required that he not only identify the foreign political parties and/or governments on whose behalf he was working, but also the income that he was earning.

Prosecutions that are not brought in a highly politicized environment such as this regularly deal with multi-year patterns of failing to report required information and income. The defendants in those cases are not presented to the world as hardened criminals who are "a grave risk" of being recidivists after age 70. Rather, the true—but mundane—consensus view is that individuals who fail to report the source and amount of their income have to revisit that decision each year, understanding that a correct filing in the current year will now risk exposing them to punishment for their initial failure to file accurate forms. Mr. Manafort has admitted his wrongdoing before this Court and awaits judgment. The Special Counsel's attempt to portray him as a lifelong and irredeemable felon is beyond the pale and grossly overstates the facts before this Court.

The prosecutions brought against Mr. Manafort have devastated him personally, professionally, and financially. The charges and intense negative media coverage surrounding them have destroyed his career. Mr. Manafort, who was always proud of his ability to provide financial support to his immediate and extended family, is now in the process of forfeiting the vast majority of his assets in order to make amends. A lengthy jail sentence is not called for in this case and would not further the statutory goals of sentencing. As a result of this widely-reported case, the public now understands what can happen when the full prosecutorial force of the United States government is brought down upon an individual, and would-be violators have been generally deterred from engaging in similar conduct.

ARGUMENT

Under 18 U.S.C. § 3553(a), a sentencing court must "impose a sentence sufficient, but not greater than necessary, to comply" with the purposes of sentencing set forth in the second paragraph of the statute. In undertaking its analysis, the Court considers the advisory sentencing range recommended by the Guidelines and any relevant Guideline policy statements, as well as other traditional sentencing factors, such as:

(1) the nature of the offense and history and characteristics of the defendant;

(2) the purpose of sentencing;

(3) the kinds of sentences available;

(4) the Sentencing Guidelines;

(5) pertinent policy statements issued by the Sentencing Commission;

(6) the need to avoid unwarranted disparities among similar offenders; and

(7) the need to provide restitution to victims.

18 U.S.C. § 3553(a).

Nearly 20 years after the Supreme Court's decision in *United States v. Booker*, 543 U.S. 220 (2005), it is now "emphatically clear" that the "Guidelines are guidelines – that is, they are truly advisory." *United States v. Cavera*, 550 F.3d 180, 189 (2d Cir. 2008) (*en banc*). The Guidelines are no longer "the only consideration" at sentencing. *Gall v. United States*, 552 U.S. 38, 49 (2007). Rather, the Guidelines merely provide a "starting point" for the Court's sentencing considerations. *Id.*; *accord Cunningham v. California*, 549 U.S. 270 (2007). The Court is to impose its sentence after "mak[ing] an individualized assessment based on the facts presented" in

each particular case. *Id.* The Court need *not* find "extraordinary circumstances to justify a sentence outside of the Guidelines range." *Id.* at 47.

As one district court judge has put it, the Guidelines' "most fundamental flaw is the notion that the complexity of human character and conduct can be rationally reduced to some arithmetic formula."[6] This is especially true in white collar and tax cases such as this, where the sentencing range is largely determined by escalating loss enhancements pursuant to USSG §§ 2B1.1, an increasingly criticized approach that usually results in draconian advisory Guidelines. *See, e.g.*, *United States v. Adelson*, 441 F. Supp. 2d 506, 512 (S.D.N.Y. 2006) (describing "the utter travesty of justice that sometimes results from the guidelines' fetish with abstract arithmetic, as well as the harm that guideline calculations can visit on human beings if not cabined by common sense."); *see also United States v. Parris*, 573 F. Supp. 2d 745, 754 (E.D.N.Y. 2008) (noting that despite the fact that the Guidelines "reflect Congress' judgment as to the appropriate national policy for such crimes . . . this does not mean that the Sentencing Guidelines for white-collar crimes should be a black stain on common sense" and sentencing defendant "to a term of incarceration of 60 months in the face of an advisory guidelines range of 360 to life."). The Supreme Court's decisions in *Gall*, *Cunningham*, and *Kimbrough v. United States*, 552 U.S. 85 (2007), significantly broadened the discretion of courts to impose a less stringent sentence than the one suggested by the Guidelines, and in this case the Court should exercise its broad discretion and impose a sentence substantially below the statutory maximum, especially since Mr. Manafort has pled guilty and accepted responsibility for his actions, has been held in protective solitary confinement for almost

[6] Terry Carter, *Rakoff's stance on the SEC draws fire, praise—and change: The Judge Who Said No*, ABA Journal, Oct. 2013, at 53.

nine months, and has agreed to forfeit the vast majority of his assets accumulated over a lifetime of work.

1. The Nature and Circumstances of the Offense

Offense Conduct

In this case, Mr. Manafort pled guilty to "conspiracy against the United States" (Count One)[7] and conspiracy to obstruct justice (Count Two). The offense conduct is set forth in detail in the Statement of the Offenses and Other Acts filed on September 14, 2018 (Doc. 423), which Mr. Manafort accepted during his change of plea hearing. Therefore, the offense conduct is briefly summarized below.

With regard to the Count One conspiracy offense, Mr. Manafort has admitted that he engaged in political affairs work in the United States on behalf of the Ukraine government but failed to file forms to register as a foreign agent under FARA, misled the DOJ about these activities, and engaged in financial transactions using the proceeds from his international consulting activities. Mr. Manafort also admitted that he had interests in various foreign financial accounts, but failed to submit FBAR forms to the Treasury Department and check the box on his income tax returns to report those interests, and that he used the foreign accounts to transfer unreported income into the United States to pay for goods and services and to acquire and improve real estate.

With regard to the Count Two conspiracy offense, Mr. Manafort admitted that he attempted to contact a potential trial witness after a superseding indictment was filed in this case (Doc. 202) and that he asked his former employee and business associate, Mr. Kilimnik, to attempt to contact

[7] The actual title of the offense charged by the Special Counsel under 18 U.S.C. § 371 is "conspiracy to commit offense or to defraud United States," not "conspiracy against the United States," which obviously sounds more ominous.

that potential witness and another potential witness. Despite the attempts, neither Mr. Manafort nor his associate had any substantive discussions with either potential witness.

Finally, in addition to the offense conduct related to Counts One and Two above, in the Statement of Offenses and Other Acts, Mr. Manafort also admitted to bank fraud and bank fraud conspiracy in connection with several loans he applied for and/or obtained. (*See* Doc. 423 ¶¶ 47-54.)

a. FARA Object

With respect to the "FARA object" of the conspiracy set forth in Count One, however, additional context is imperative. The Department of Justice's own Office of the Inspector General ("OIG") has stated that the prosecution of FARA violations has been an exceedingly rare occurrence. More specifically, the Department has brought just seven criminal FARA cases between 1966 and 2015, only three of which resulted in convictions for FARA-related conduct. Office of the Inspector General, U.S. Department of Justice, *Audit of the National Security Division's Enforcement of the Foreign Agents Registration Act* (Audit Div. 16-24, Sept. 2016) (OIG Report) at ii. Indeed, the majority of the agents interviewed for the audit believed that DOJ's NSD officials, who must approve FARA cases, are "reluctant to approve these charges." *Id.* Some investigators attributed this reluctance to NSD's "clear preference toward pursuing registration for alleged FARA violators rather than seeking prosecution" because FARA can be used as an important counterintelligence tool. *Id.* While NSD officials disputed a reluctance to approve FARA cases, they conceded that "the primary goal of FARA is in fact to ensure appropriate registration and public disclosure." *Id.* Importantly, the OIG audit further found that there is intra-Department confusion about the law as field agents, prosecutors, and NSD officials have offered

differing understandings about the intent of FARA as well as what constitutes a "FARA case." *Id.* at i.

In terms of statistics, both the number of active registrants and new registrants of FARA per year peaked in the 1980s, abruptly declined in the mid-1990s, and continued to trend downward, albeit at a slower pace, until at least 2014. *Id.* at 5. The timing of the public's awareness of the Special Counsel's investigation into Mr. Manafort's FARA-related conduct correlates with a sharply increased number of first time FARA filings and supplemental filings. According to an NBC News analysis, the number of first time FARA filings rose 50 percent to 102 between 2016 and 2017, and the number of supplemental filings more than doubled from 618 to 1,244 in 2017. *See* Julia Ainsley, Andrew W. Lehren and Anna Schecter, *The Mueller effect: FARA filings soar in shadow of Manafort, Flynn probes*, NBC News (Jan. 18, 2018).[8]

b. Money Laundering Object

Mr. Manafort appears to be the first individual ever charged with money laundering that is based on a FARA filing violation. In considering the money laundering offense conduct for sentencing purposes, it is therefore appropriate for the Court to consider under Section 3553(a) the novelty of the crime charged. To use this "esoteric" law as the backbone of the money laundering conspiracy has pushed the money laundering statute to near its breaking point. Simply stated, the Special Counsel charged that Mr. Manafort's failure to submit a registration statement under FARA (*i.e.*, an act of omission), or false and misleading FARA statements that Mr. Manafort made in 2016 and 2017, transformed otherwise legitimate consulting income earned from 2006 until 2014 into tainted funds that were subsequently involved in financial transactions. Similarly, the

[8] *Available at*: https://www.nbcnews.com/news/us-news/mueller-effect-fara-filings-soar-shadow-manafort-flynn-probes-n838571.

Special Counsel alleged that the payment of consulting and professional fees promoted the FARA violation.

The Special Counsel's use of the money laundering statute subjects Mr. Manafort to more severe punishment, increasing both potential jail time and asset forfeiture. Indeed, while Mr. Manafort is the only person who has ever been charged with FARA-based money laundering, the approach utilized here could be applied to every FARA prosecution.

While this theory and the facts are sufficient to allege the money laundering object conspiracy to which Mr. Manafort has pled guilty, the decision brings to mind the judicial admonition that courts must be "careful not to allow the money laundering statute to become a money spending statute." *United States v. Brown*, 553 F.3d 768, 786 (5th Cir. 2008). As one court has noted, the goal is to "ensure that the money laundering statute will punish conduct that is really distinct from the underlying specified unlawful activity and will not simply provide overzealous prosecutors with a means of imposing additional criminal liability. . . ." *United States v. Brown*, 186 F.3d 661, 670 (5th Cir. 1999). Under the Section 3553(a) factors, the Court should consider the risk that a money laundering conspiracy, when charged in a case like this, can be used to provide for severe punishment even though the underlying FARA violation would not result in a lengthy sentence. Mr. Manafort's failure to file FARA registration forms, an offense for which the DOJ's recent internal audit shows he would historically have faced little or no jail time, triggered the money laundering conspiracy charge that swept in millions of dollars of otherwise legitimately earned consulting fees. Layering the money laundering conspiracy on top of the "esoteric" FARA law results in Mr. Manafort facing what could potentially be a life sentence for underlying activity that, while certainly illegal, unquestionably falls on the less serious end of the spectrum of federal felonies.

2. The History and Characteristics of the Defendant

a. Personal Life

Mr. Manafort comes from humble beginnings and he worked hard to succeed. His grandfather arrived from Italy in the early twentieth century. Mr. Manafort grew up in a blue-collar family with close ties to their community. His grandfather established a small construction company in Connecticut that became successful. Mr. Manafort's father also worked for the company, which continues to operate and is still managed by members of the Manafort family.

In 1971, Mr. Manafort became the first member of his family to graduate from college, earning degrees with honors from Georgetown University in business administration and economics. In 1974, Mr. Manafort earned a law degree from the Georgetown University Law Center. In 1978, he married his wife, Kathleen. They have two daughters together, Jessica and Andrea, and two young grandchildren, with more on the way.

Many already assume they "know" Mr. Manafort from the numerous—and mostly negative—press reports about him and his work as a political consultant in Ukraine. Others view him adversely solely because of his work during the 2016 campaign on behalf of President Trump. Those who truly know him, however, paint a very different picture of the man.

Mr. Manafort's wife, Kathleen, writes to the Court about how her husband of 40 years has always put her and his children first and foremost despite a career filled with grueling travel schedules and high-pressure assignments.[9] Mrs. Manafort describes her and Mr. Manafort as a "great team" and a "partnership of equals" that has shared many memories, challenges, and sacrifices.[10] She also describes how Mr. Manafort "encouraged me to be my own person and

[9] *See* Lttr. of Kathleen Manafort, annexed hereto as Exhibit A.

[10] *Id.*

follow my own interests and have my own career" and never viewed her as a traditional housewife dependent on him.[11]

Kathleen recalls one particular instance where Mr. Manafort turned down an invitation to dine at the White House with then-Vice President George H.W. Bush because the dinner conflicted with Andrea's graduation from the Brownies to the Girl Scouts. She recalls:

> I will never forget overhearing [Mr. Manafort's] response to a colleague that later asked him why he would miss such an important event, [Mr. Manafort stated] '[i]n 25 years no one will remember if I was at that dinner, but my daughter will remember that I was at her graduation.' I can assure you that he wanted to be at that dinner very badly, but he didn't hesitate, he didn't complain, and most importantly, he was right.[12]

Mrs. Manafort goes on to detail how, in addition to his unwavering and empowering support for his daughters, Mr. Manafort provided the same support for her, in particular, as she worked through law school night classes, and, most significantly, when she suffered a very serious brain injury and faced a long, uncertain recovery.[13] Mrs. Manafort also details how her husband's support extended to family members such as her own parents as they got older, her sister-in-law, who suffers from spina bifida and needed a handicapped-accessible home, and nieces and nephews who needed help with their educations.[14] Mrs. Manafort describes her husband as "the rock the family has relied on for years."[15]

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[11] *Id.*

[12] *Id.*

[13] *Id.*

[14] *Id.*

[15] *Id.*

Mr. Manafort's daughter, Andrea Shand, has also written to the Court to provide insight into her father's true character. Her letter is filled with memories of her father from her childhood, examples of his generosity with his time and resources for both his immediate and extended family, and the fortitude he displayed after he had been indicted but still stayed up late at night to help Andrea care for her newborn son.[16] We urge the Court to review Andrea's entire letter, but highlight a particularly poignant section here:

> As a father, he has not just taught me the importance of being generous or selfless, but he has shown me what that really means and how to practice it. This is something that I hope to emulate with my own children. I love my dad more than words can describe. I am so blessed that he is my father and I wouldn't change that for anything in the world. While I know that he is not perfect, I love him just as much as if he was. Because he is truly a good man. Something I wish more people would have the opportunity to see – and not just for his sake but for their own. Because knowing him and learning from him has given me faith in humanity and shown me the goodness that people are capable of. And I know he is more than worthy of forgiveness just like every person under God is.[17]

A long-time friend, David Bennett, recalls in his letter to the Court how he came to know Mr. Manafort when their daughters attended elementary school together.[18] That turned into a life-long friendship. Mr. Bennett describes Mr. Manafort as "a natural leader" and a "compassionate" and "loyal . . . family man."[19] Another long-time friend and neighbor, Lt. Col. (Ret.) Wayne Holland—who testified as a witness for the Special Counsel at Mr. Manafort's EDVA trial—has written to the Court to describe that, despite his very busy work schedule, Mr. Manafort always

[16] *See* Lttr. of Andrea Shand, annexed hereto as Exhibit B.

[17] *Id.*

[18] *See* Lttr. of David Bennett, annexed hereto as Exhibit C.

[19] *Id.*

made time for his friends and family during family milestones, both happy and sad, such as weddings, funerals, and their children's graduations and sporting events.[20] It is rare for a government witness to write a letter to the Court asking for leniency for a defendant at the time of sentencing. Mr. Holland hopes that he will see his old friend soon. Mr. Manafort grew up with his first cousin, David Cimadon, who recalls how they spent time playing basketball at the Boys Club and how Mr. Manafort has been a steadfast member of his family; in more recent years, Mr. Manafort has provided him with emotional support and offered to help his family because Mr. Cimadon's wife suffers from Alzheimer's disease.[21]

Mr. Manafort's friend from elementary school, Bart Mazzarella, served as an altar boy with Mr. Manafort, played football with him, and recalls that in 9th grade Mr. Manafort became his school's class president due to "his likability and his leadership ability (that was evident even back then)."[22] Mr. Mazzarella describes Mr. Manafort as "a consummate gentleman, always a good sport and someone we all looked up to."[23]

In his letter to the Court, Kathy Manafort's cousin, Jeff Richards, shares many examples of Mr. Manafort's kindness and generosity over the years, but one particular example reflects how Mr. Manafort often used his political experience to help those in need. Mr. Richards writes:

> There were many times when [Mr. Manafort] was asked for favors. My youngest sister, studying in Italy, fell for a young Iraqi street painter who had run away after all three of his brothers had been killed in the Iran-Iraq war. Agents from Iraq found him, raided his room in Italy and took all his papers. In desperation, my sister asked Paul to help, though she and Paul hardly knew each other. Paul helped him obtain a Green Card, helped him

[20] *See* Lttr. of Lt. Col. (Ret.) Wayne Holland, annexed hereto as Exhibit D.

[21] *See* Lttr. of David Cimadon, annexed hereto as Exhibit E.

[22] *See* Lttr. of Bart Mazzarella, annexed hereto as Exhibit F.

[23] *Id.*

> out of that dangerous situation, and helped him find work here. This is just one example, as Paul would always make time to help others.[24]

The list goes on. In his letter to the Court, Mr. Manafort's youngest brother, Dennis Manafort, recalls how his older brother helped pull him from the clutches of drug addiction and get back on his feet after a difficult period. He writes:

> Paul has always been there for me, especially after I was divorced and he never gave up on me when I ended up being addicted to drugs myself. My brother was by my side at my darkest hour. It was because of his support and love that helped me pull my life back together. This was a very long battle, and he never gave up. I have been sober for many years now, I have a home and a steady job, and my brother never forgets to remind me how proud he is.[25]

Thom Bond, Mr. Manafort's brother-in-law, writes about how Mr. Manafort stepped up to help when Mr. Bond was diagnosed with cancer, when Mr. Bond's parents needed medical care and adult housing, and how Mr. Manafort took an interest in and looked after his employees.[26] Stacy Bond recalls how when she first met Mr. Manafort she felt intimidated but quickly recognized that "[h]e is a man with a big heart" who formed a special bond with Mrs. Bond's daughter and he helped provide for her over the years.[27] Rosann Garber Brodie, a long-time family friend, writes about how Mr. Manafort is the "glue" holding their circle of friends together and that Mr. Manafort's friends include "doctors, an electrician, a personal trainer, a receptionist, a

[24] Lttr. of Jeff Richards, annexed hereto as Exhibit G.

[25] Lttr. of Dennis Manafort, annexed hereto as Exhibit H.

[26] *See* Lttr. of Thom Bond, annexed hereto as Exhibit I.

[27] *See* Lttr. of Stacy Bond, annexed hereto as Exhibit J.

UPS worker and housewives."[28] She notes that they are all "lost without [Mr. Manafort] these days."[29]

Probably one of the most poignant examples of the *true* Paul Manafort is reflected by how he stepped up after his middle brother Bob's death at a young age. In her letter to the Court, Mr. Manafort's niece, Starr Manafort, recalls how, after her father passed away when she was just seven years old, Mr. Manafort stepped in as a loving and supporting father figure who cared for Starr as though she was his own daughter.[30] Mr. Manafort supported Starr's development and education by paying her school expenses and mentoring her as she embarked on her career.[31] She writes that Mr. Manafort:

> [H]as provided financial and emotional support in times when I have felt so stuck in my life that it has seemed impossible to move forward. All it took is one phone call or email to my Uncle and my situation would be improve one way or another. He is the rock upon which our family supported and the ground from which our success grows. The hardest thing about these past two years has been not having him here to celebrate our joys, ease or sorrows and fix our problems.[32]

Mr. Manafort's friend, Nicholas Panuzio, who has known Mr. Manafort for almost 50 years, recalls how, following his brother's death, Mr. Manafort essentially adopted Starr "and treated her with the same love and devotion as his two biological daughters" and has "supported Starr in each developmental phase of her life with whatever resource was needed."[33]

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[28] Lttr. of Rosann Garber Brodie, annexed hereto as Exhibit K.

[29] *Id.*

[30] *See* Lttr. of Starr Manafort, annexed hereto as Exhibit L.

[31] *Id.*

[32] *Id.*

[33] Lttr. of Nicholas Panuzio, annexed hereto as Exhibit M.

These supportive letters from Mr. Manafort's family and friends dispel the public's mistaken impression of Mr. Manafort. He is a loyal and compassionate man upon whom his immediate family, his extended family, and his friends have relied for decades for support and guidance. The fact that these individuals are willing to submit letters of support for Mr. Manafort under the circumstances of this high-profile case—which has received negative media attention beyond compare—is a testament to just how much Mr. Manafort is admired by those who *truly* know him. There are many others who support Mr. Manafort and hope that his current situation will end soon, however, they were not comfortable publicly expressing their thoughts about and experiences with Mr. Manafort out of fear that they will be subjected to harassment and ridicule. In fact, Mr. Manafort himself has expressly asked that some individuals not include a letter of support out of concern for the potential impact a public filing may have on their personal and/or professional lives.

b. Business Life

Government Service and Contributions to the U.S. Political Process

Mr. Manafort has spent his life advancing American ideals and principles. He has served as a trusted advisor to four United States Presidents. Mr. Manafort began his career in the Ford Administration, where he served as Associate Director in the Office of Presidential Personnel and acted as liaison between the White House, international and national security, and energy-related departments for all Presidential appointments. Next, President Ronald Reagan appointed Mr. Manafort as a Director of the Overseas Private Investment Corporation. Thereafter, Mr. Manafort served in the Reagan Administration as a member of the Investment Policy Advisory Committee at the Office of the U.S. Trade Representative. With strong organizational and leadership skills, Mr. Manafort was a consultant, strategist and coordinator for the campaigns of Presidents Gerald

Ford, Ronald Reagan, George H.W. Bush, and Donald J. Trump as well as for Senator Bob Dole in his 1996 campaign effort. In all, Mr. Manafort has advised elected officials at the federal, state, and local levels for over 30 years.

International Consulting Work

During his years outside of government service, Mr. Manafort also worked with world leaders. Mr. Manafort has spent a lifetime promoting American democratic values and assisting emerging democracies to adopt reforms necessary to become a part of Western society. At times, he interacted with politicians and business people in emerging countries to assist in the development of American beliefs of equal justice, human rights and free markets. As an experienced strategist, Mr. Manafort often found ways to build bridges and create economic opportunities between those individuals, their countries and the United States. As part of his work, Mr. Manafort created, organized, and conducted leadership and educational programs that helped establish functioning democratic processes to oversee elections. He educated election officials in connection with election management techniques and procedures. Mr. Manafort also created and managed international election observer programs in over 25 countries. Mr. Manafort's efforts highlighted the opportunities and benefits of the American system and created commonality which, in turn, fostered substantial relationships between the United States and other countries.

One example of the worldwide impact that Mr. Manafort's work has had can be found in how he persuaded Kenya's former president in 1989 to send a message to the international community by publicly burning millions of dollars' worth of ivory obtained by illegal elephant poaching. This event, which was featured on the cover of *Time*, together with Mr. Manafort's advocacy in the United States, led the government to declare elephants an endangered species and led Congress to pass the African Elephant Conservation Act. Another example of Mr. Manafort's

impact can be found in the Caribbean Basin Initiative, which Mr. Manafort helped implement during the Regan administration and which became a landmark program to spread democracy throughout the Caribbean and Central America.

With regard to Mr. Manafort's work in Ukraine, this has been the focus of many simply due to its proximity to Russia. Many want to characterize it as work on behalf of a "pro-Putin" politician and permit no further discussion of the matter. Indeed, some stood outside the courthouse accusing him of disloyalty—a man who has advised *multiple* U.S. Presidents over the course of his career. As is often the case in life, however, the situation was more complicated. Mr. Manafort's efforts were during a time when Ukraine was transitioning from a former Soviet republic into an independent nation focused on its own economic, judicial, and political modernization and reform. His efforts included assisting with Ukraine's application to become a member state of the European Union and acting as one of the Ukrainian government's liaisons to the European Commission. Mr. Manafort was in regular contact with U.S. officials at the American Embassy in Kiev to communicate details of his work in Ukraine. In fact, the very charges which the Special Counsel brought against him and to which he pled guilty involve his work regarding the so-called Hapsburg Group—a group of Western European politicians that were seeking to integrate Ukraine into Europe. Yet, little thought is given by the Special Counsel to the inherent inconsistency of questioning Mr. Manafort's loyalty even though he now stands convicted of working with a pro-Western group seeking to bring Ukraine closer to the United States and its allies.

The work Mr. Manafort performed for the Ukrainian government was similar to work he performed over his career in helping institute democratic reform in countries all over the world,

including, but not limited to, Pakistan, Kenya, South Africa, Botswana, the Philippines, Argentina, Venezuela, Peru, St. Lucia, the Bahamas, the Dominican Republic, and Jamaica.

The 2016 Campaign

In 2016, Mr. Manafort served as campaign chairman for Donald J. Trump's successful campaign for the presidency of the United States. Mr. Manafort served as an advisor and campaign chairman for approximately five months without compensation. The Special Counsel's investigation and prosecution in this case (and the EDVA case) do not charge him with anything related to Russia collusion or to the presidential campaign.[34]

Mr. Manafort's long career in public affairs and his work for then-candidate Donald J. Trump is perhaps best summarized by political strategist Doug Davenport:

> When I see/hear any of the negative reporting on Paul, I stop and shake my head and wonder how any of this could have gotten to this point. [Mr. Manafort] was ALL-IN for this current President, and never once (at least to me) ever asked, offered, or suggested any shortcuts or other dirty political tactics – foreign or domestic – to try to further the candidacy of the man who now sits in the most powerful chair on earth. It is easy to look at 40+ years of someone's accomplished career in DC and around the world and boil it down to a simple summary of short cuts and greased relationships – as opposed to looking at the whole of a man and his contributions to society and government service that was Paul Manafort.[35]

Though some may disagree with Mr. Manafort's politics and may not like some of the individuals he worked for, it cannot be said that Mr. Manafort has had anything but an extraordinary and largely successful career and played a significant role in promoting democratic values.

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[34] As Judge Ellis noted in the EDVA case: "And so what is really going on … is that this indictment [was] used as a means of exerting pressure on the defendant to give you information that really is in [the Special Counsel's] appointment, but itself has nothing whatever to do with it." *United States v. Manafort*, 18-CR-0083-TSE (E.D.Va. 2018), Tr. of May 4, 2018 Motions Hearing at 8.

[35] Lttr. of Doug Davenport, annexed hereto as Ex. N.

c. Organizational and Charitable Work

Mr. Manafort has been involved with a number of organizations. He has served as a member of the Board of Directors for the Center for Study of Democratic Institutions, which focused on public health, democracy, and human rights; the Center for Democracy, a think tank Mr. Manafort established to focus on democratic institution building, with particular emphasis on third-world countries and former republics of the Soviet Union; the U.S. Youth Council, an organization that sponsored educational, cultural, political, and business exchange trips and seminars for emerging young leaders in various countries; and as a Senior Fellow of the Center for Strategic and International Studies, a bipartisan think tank dedicated to helping lawmakers and policymakers chart a course for a better world.

Mr. Manafort has also been involved in charitable and community organizations closer to home. Mr. Manafort's father served as the mayor of New Britain, CT and encouraged his children to become involved in public service and give back to their community. For example, before he relocated to Virginia to attend college, Mr. Manafort established a program with the local Boys Club that allowed low income children residing in public housing projects to participate in the Club's basketball, baseball, and football leagues, where the children learned skills, teamwork, and sportsmanship. The program became very successful and continued even after Mr. Manafort left New Britain to attend college. Mr. Manafort's interest in helping young people continued when he ran his public affairs company, where he established a successful intern program that taught recent college graduates both business and organizational skills; many graduates of the program went on to leadership positions in public relations, the media, and politics.

There are other examples of Mr. Manafort's genuine care for others and contributions to his community. After his wife Kathy suffered a serious injury in 1998, Mr. Manafort became

active in brain trauma research and fundraising, and he sat on the Brain Trauma Foundation's board of directors. Mr. Manafort volunteered his time to coach basketball and soccer programs for girls; he served as President of the U.S. Youth Council, which adopted an exchange program to help implement programs for future leaders from foreign counties to promote democratic values and free market principles; and he helped create and manage annual political seminars for young men and women from the Young Republicans National Federation. Mr. Manafort has also raised money for numerous community and societal causes, including non-profit Inova Alexandria Hospital, the Good Shepard Catholic Church, the National Diabetic Association, Georgetown University Law Center, and the Boy and Girl Scouts of America. Mr. Manafort also created and funded an annual education scholarship program that allowed boy scouts from low income families located in this father-in-law's district to attend college. At St. Ann's Church in New Britain, Connecticut, Mr. Manafort established a community resource program for elderly and low income members of his community that provided them with needed food, transportation to medical appointments and shopping trips, and daily in-door activities for senior citizens.

d. Age and Health Concerns

Mr. Manafort's age alone suggests that a lengthy sentence of imprisonment would be particularly deleterious. A study commissioned by the DOJ's National Institute of Corrections concluded that imprisonment is especially problematic for older inmates like Mr. Manafort, finding that "several important factors seem to speed the aging process for those in prison" and identifying numerous management problems associated with older inmates. *See* National Institute of Corrections, U.S. Department of Justice, *Correctional Health Care* (2004) at 8-9.[36] This study noted that older inmates are uniquely vulnerable to abuse and predation, that they experience

[36] *Available at*: https://info.nicic.gov/nicrp/system/files/018735.pdf

difficulty in establishing social relationships, that they often need special physical accommodations in a relatively inflexible physical environment, and that many need special programs in a setting where special privileges are disdained. *Id.* at 11. The study found that older first-time offenders "are frequently severely maladjusted and especially at risk for suicide, explosiveness, and other manifestations of mental disorder." *Id.* Moreover, "[s]ince their behaviors are not well tolerated by other inmates, their victimization potential is high." *Id.*

Aside from high blood pressure, Mr. Manafort was a relatively healthy 69-year-old man before he was remanded to custody in June 2018, where has been held in protective solitary confinement. As detailed in the PSR, since that time, his health has deteriorated. *See* PSR ¶¶ 140-141. In jail, he has developed severe gout, which causes significant pain and swelling in his right foot. At one point, he needed to be transported to Alexandria Hospital for treatment. *Id.* at ¶ 140. Mr. Manafort requires a wheelchair to ambulate on bad days, or a cane on "good" days. *Id.*

Since his incarceration, Mr. Manafort has been prescribed numerous prescription drugs to address various health challenges, including: Allopurinol and Colchicine to treat his gout symptoms; Amlodipine Besylate and Carvedilol to treat his high blood pressure; Atorvastatin to treat high cholesterol; Otezla and Lac-Hydrin to treat psoriasis; and Meloxicam to treat arthritis, among other prescription and over-the-counter treatments. Although Mr. Manafort downplays his physical health challenges for his family and friends, the reality is he is not the relatively healthy man he was prior to his incarceration. Recently, doctors at the jail identified a potential thyroid problem and Mr. Manafort is currently undergoing diagnostic testing.

This is not to garner sympathy; outside observers have seen the impact of his incarceration. A prominent legal and political commentator, who recently observed Mr. Manafort in the courtroom, stated the following in *The Hill*:

> I saw Paul Manafort in court the other day[.] This is a man who looks like he's dying. He is walking with a cane. He looks disoriented. He has declined so precipitously in prison that when you realize he has now lost his cooperation agreement and the chance for a lower sentence and he's facing an entirely separate prison sentence in the Virginia case, a 70-year-old man is looking like he may die in prison, and it is just a profound thing to think about. Apparently he's using a wheelchair a lot of the time[.] Prison is rough for anybody. Yes, he did wrong and he did wrong over and over again. But, I mean, this man is really, really in danger of losing his life.[37]

The conditions of Mr. Manafort's incarceration have taken an even greater toll on his mental and emotional health. *See* PSR ¶¶ 142-144. To ensure his safety, Mr. Manafort is confined to solitary confinement at the Alexandria Detention Center where he spends 21 hours a day locked in a cell alone. Family visitation time is limited to just two 30-minute visits per week; as a result, he meets more often with his legal team than his loved ones. He suffers from severe anxiety, panic attacks, and a constant feeling of claustrophobia while he is locked alone in his cell each day. These conditions of confinement were designed for violent offenders who pose risks to the safety of other inmates or jail personnel, or who are placed in solitary confinement as punishment for disciplinary infractions; they were surely not intended for the long-term confinement of a first-time white-collar offender of Mr. Manafort's age and health.

Section 3553(a) recognizes that the Court should take into account any medical issues facing the defendant and whether the sentence imposed will "provide the defendant . . . with needed medical care . . . in the most effective manner." 18 U.S.C. § 3553(a)(2)(D). The advisory Guidelines likewise provide that:

> Physical condition or appearance, including physique, may be relevant in determining whether a departure is warranted, if the condition or appearance, individually or in combination with other offender characteristics, is present to an unusual degree and distinguishes the cases from the typical cases covered by the Guidelines. An extraordinary physical

[37] Joe Concha, *CNN's Toobin: 'Almost unrecognizable' Manafort 'In danger of losing his life' in prison*, CNN (Feb. 14, 2019) (*available at*: https://thehill.com/homenews/media/430004-cnns-toobin-almost-unrecognizable-manafort-in-danger-of-losing-his-life-in).

> impairment may be a reason to depart downward; *e.g.*, in the case of a seriously infirm defendant, home detention may be as efficient as, and less costly than, imprisonment.

USSG §5H1.4.

Courts routinely impose non-custodial sentences in cases involving defendants who suffer from serious medical conditions. For example, following the defendant's conviction after trial for wire fraud in *United States v. Burks*, 2010 WL 1221752 (E.D.N.Y. Mar. 29, 2010) , the sentencing court imposed a sentence of one month incarceration and five years' probation despite a Guidelines range of 57-71 months where, *inter alia*, the defendant suffered from degenerative diabetes. *Id.* at *2; *see also United States v. McFarlin*, 535 F.3d 808, 810-11 (8th Cir. 2008) (affirming variance for 56-year old defendant with numerous health problems, including coronary disease and who had undergone several operations); *United States v. Alatsas*, 2008 WL 238559 (E.D.N.Y. Jan. 16, 2008) (imposing a term of probation, despite Guidelines range of 24-30 months where, *inter alia*, "[d]efendant has multiple complex medical problems, which will be better cared for outside of prison.").

In *United States v. Barbato*, 2002 WL 31556376 (S.D.N.Y. Nov. 15, 2002), a pre-*Booker* decision, the defendant pled guilty to using extortionate means to collect extensions of credit. The sentencing court granted a downward departure from a then-mandatory Guideline range of 24-30 months imprisonment based on the defendant's history of heart problems, and imposed a sentence of home detention and two years of supervised release. Notably, the *Barbato* court imposed home confinement even though the prosecution contended that the Bureau of Prisons would be able to provide adequate treatment for the defendant's health conditions. The court noted that "[i]t is often relevant, though not always controlling, whether the BOP can provide adequate care." *Id.* at *4.

For all of these reasons, Mr. Manafort's physical, mental, and emotional health, together with his age and his almost nine-month solitary confinement, weigh strongly in favor of a sentence in this case that does not include a lengthy period of incarceration.

3. The Purpose of Sentencing

Pursuant to the sentencing statute, a defendant's sentence should be designed:

> (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;
> (B) to afford adequate deterrence to criminal conduct;
> (C) to protect the public from further crimes of the defendant; and
> (D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner[.]

18 U.S.C. § 3553(a)(2)

To be clear, Mr. Manafort does not dispute his guilt, but these factors do not warrant a substantial period of imprisonment in this case. As noted above, the Special Counsel's investigation of Mr. Manafort's FARA violations—the specified unlawful activity underpinning the money laundering conspiracy charge and forfeiture penalties—are almost never criminally prosecuted and have historically resulted in civil penalties (or, more often, guidance regarding how to comply with the statute). Indeed, the 2016 OIG audit report noted that "historically there have been hardly any FARA prosecutions. Over the past 50 years, between 1966 and 2015, [DOJ] reported to us that it brought, in total, only seven criminal FARA cases," only three of which resulted in convictions for FARA-related conduct. OIG Report, *supra* at 8. The Inspector General further found that even civil actions for injunctive relief related to FARA violations have not been brought since 1991. *Id.* at 12.

It is also significant that the foreign bank accounts related to the tax and FBAR objects were established at the behest of the benefactors of Mr. Manafort's foreign clients, *not* because Mr. Manafort intended from the outset to use the accounts to evade income tax or foreign bank

account reporting obligations. In fact, in 2014, Mr. Manafort *voluntarily disclosed* his interest in foreign accounts to the FBI, which was engaged at that time in an unrelated investigation of Ukraine-based assets. The government's main cooperating witness confirmed this during his testimony during the EDVA trial. *See, e.g.*, *United States v. Manafort*, 18-CR0083-TSE (E.D. Va. 2018), Trial Tr. 1453-57 (testimony from Rick Gates that in 2014 he and Mr. Manafort met with attorneys from DOJ and special agents from the FBI and disclosed DMI's work in Ukraine and foreign accounts). Mr. Manafort acknowledges that he was wrong when he used funds held in these foreign accounts to pay vendors in the United States for personal goods and services, and to purchase and improve real estate, and that those decisions amounted to federal crimes.

With regard to the bank fraud conduct that Mr. Manafort acknowledged in this case, Mr. Manafort again admits that the loan applications contained false information. Mr. Manafort's conduct in this regard stemmed from a desire to maintain his assets in the face of what he hoped and believed would be a temporary financial setback and, for that, he has accepted responsibility before this Court.

Lastly, with regard to Mr. Manafort's direct and indirect attempts to contact potential trial witnesses, Mr. Manafort again acknowledges that his conduct was wrong. That said, the offense conduct related to these charges—a handful of short or ignored telephone calls and text messages—is distinguishable from the types of conduct common to most witness tampering cases, where potential witnesses are offered bribes or other financial incentives, or threatened with physical harm, to give false testimony.

The charges in this case (and in the EDVA matter), and the collateral consequences Mr. Manafort has already suffered as a result of his criminal conduct, including almost nine months of incarceration in protective solitary confinement, substantial negative media coverage that has

ruined his reputation, and the severe financial punishment experienced by Mr. Manafort and his family as a result of the forfeiture provisions of his plea agreement, have adequately conveyed the seriousness of Mr. Manafort's conduct. He is deeply remorseful, has suffered almost unprecedented public shame, and he and his family will have to live with the collateral consequences of his conduct for the rest of their lives.

Despite the protestations of the Special Counsel, there is no risk of recidivism in light of the very harsh lesson that Mr. Manafort has already learned, especially considering the nature of these offenses, the damage done to his reputation, and his advanced age. *See, e.g.*, *United States v. Smith*, 275 F. App'x 184, 187 (4th Cir. 2008) (affirming 54 months downward variance in part because of low risk of recidivism). Statistical data from a study commissioned by the United States Sentencing Commission show that "[r]ecidivism rates decline relatively consistently as age increases." United States Sentencing Commission, *Measuring Recidivism: The Criminal History Computation of the Federal Sentencing Guidelines* (May 2004) at 12.[38] That study indicates that a defendant over the age of 50 and in criminal history category I has a 6.2 percent likelihood of recidivating. *Id.* at Ex. 9.[39] It is plain that the likelihood of recidivism for a nearly 70-year-old man such as Mr. Manafort is far less than 6.2 percent. Beyond his age, a number of other characteristics make recidivism highly unlikely, including Mr. Manafort's advanced level of education and lack of illicit drug use. *See Measuring Recidivism*, at 12-13. Indeed, elderly tax

[38] *Available at*: https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2004/200405_Recidivism_Criminal_History.pdf

[39] A related study of recidivism rates by "true" first offenders (*i.e.*, those with no prior involvement with the criminal justice system) showed that such first offenders had a "primary" recidivism rate (including supervised release/probation violations, re-arrest, and re-convicted) of 6.8 percent, and a re-conviction rate (involving an actual conviction for a subsequent offense) of only 2.5 percent. U.S.S.C., *Recidivism and the "First Offender,"* at Ex. 6 (*available at*: https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2004/200405_Recidivism_First_Offender.pdf).

and white-collar offenders generally are considered low risk by the Bureau of Prisons and pose very little risk of reoffending.[40]

Mr. Manafort has been personally and financially devestated as a result of his conduct and the forfeiture he has agreed to. There is no reason to believe that a sentence of years in prison is necessary to prevent him from committing further crimes. He poses no risk to the public, which itself has certainly been generally deterred from engaging in similar conduct based on the widespread negative publicity this case has garnered, as well as his incarceration in solitary confinement. Lastly, a term of imprisonment is not required in this case to provide Mr. Manafort with necessary educational or vocational training, medical care, or other correctional treatment. Indeed, with regard to needed medical care, including the recently discovered potential thyroid issue, those needs could be better addressed by Mr. Manafort's own physicians outside of the federal prison system.

4. The Kinds of Sentences Available

The Court has the authority and discretion to impose a wide range of alternatives to the lengthy term of incarceration contemplated by the Guidelines or the maximum penalty authorized under the relevant statutes. *See* 18 U.S.C. §§ 3553(a)(3) and 3561(a)(1). A sentence significantly below the statutory maximum is appropriate in this case in light of: Mr. Manafort's remorse for his conduct; his acceptance of responsibility as reflected in the plea agreement (where he also admitted his guilt as to the mistried counts in the EDVA case); the fact that he and the general public have been deterred from engaging in similar conduct in light of the punishment Mr. Manafort has already suffered and the widespread media attention this case has garnered; his age

[40] *See* Evan J. Davis, *Is the First Step Act Good New for Tax and Other White-Collar Defendants?* (Jan. 4, 2019) (*available at*: https://www.taxlitigator.com/is-the-first-step-act-good-news-for-tax-crime-and-other-white-collar-defendants-by-evan-j-davis/).

and deteriorating health; the financial devastation Mr. Manafort has experienced as a result of his prosecution and forfeiture agreement; the detrimental effect on his family; and, as explained below, the types of sentences imposed for similar conduct. Although there are many types of sentences available, the defense respectfully asks the Court to consider the time that Mr. Manafort has already served in solitary confinement and his agreement to forfeit substantial assets in fashioning its sentence.

5. The Sentencing Guidelines and The Commission's Policy Statements

Mr. Manafort objects to the PSR[41] with regard to Probation's inclusion of an enhancement for role in the offense and Probation's determination that Mr. Manafort should get no credit for acceptance of responsibility. Furthermore, Mr. Manafort submits that the base offense level, while calculated accurately, overstates the seriousness of the offense.

a. Aggravating Role Enhancement

As a threshold matter, Probation erroneously asserts that the parties agreed in the plea agreement that an aggravating role enhancement pursuant to USSG § 3B1.1 is applicable in this case. *See* PSR ¶¶ 22, 163. This is incorrect—Mr. Manafort expressly reserved his right to object an enhancement for his role in the offense. *See* Doc. 422 (Plea Agreement dated Sept. 13, 2018) at 5 ("[Mr. Manafort] also reserves the right to disagree with the Estimated Guideline Range calculated by [the Special Counsel's] Office with respect to role in the offense.").

Probation has applied an aggravating role enhancement on the theory that Mr. Manafort was "an organizer or leader of a criminal activity that was otherwise extensive." *See* PSR ¶¶ 90, 112 (referencing USSG § 3B1.1(a)). A similar provision is found in USSG § 3B1.1(b) with regard

[41] To be clear, Mr. Manafort acknowledges the terms of his plea agreement, which states that "a sentence within the Estimated Guidelines Range (or below) would constitute a reasonable sentence in light of all of the factors set forth in 18 U.S.C. § 3553(a)[.]" (Doc. 422.)

to a "manager or supervisor" of schemes that involved five or more participants or that was otherwise extensive. USSG § 3B1.1(c) imposes a two-level enhancement for any "organizer, leader, manager, or supervisor" engaged in any criminal activity without regard for the number of participants or the extensiveness of the criminal conduct.

The comments to these Guideline provisions provide that they should be considered with respect to "criminal organization[s]." *See* USSG § 3B1.1, Background Note ("This section provides a range of adjustments to increase the offense level based upon the *size of a criminal organization* (*i.e.*, the number of participants in the offense) and the degree to which the defendant was responsible for committing the offense.") (emphasis added); *see also id.*, App. Note 2 ("An upward departure may be warranted . . . in the case of a defendant . . . who . . . exercised management responsibility over the property, assets, or activities of *a criminal organization*.") (emphasis added); *id.*, App. Note 3 ("In assessing whether *an organization* is 'otherwise extensive,' all persons involved during the course of the entire offense are to be considered.") (emphasis added). The notion that an aggravating role enhancement is appropriate only in the context of a criminal organization or enterprise—that is, an organization with a primary objective of engaging in crime—is further bolstered by the background commentary to this Guideline provision, which states:

> In relatively small *criminal enterprises* that are not otherwise to be considered as extensive in scope or in planning or preparation, the distinction between organization and leadership, and that of management or supervision, is of less significance than in larger *enterprises* that tend to have clearly delineated divisions of responsibility.

USSG § 3B1.1 cmt. background (emphases added). *See also United States v. Brodie*, 524 F.3d 259, 271 (D.C. Cir. 2008) ("Just as a party who knowingly assists a *criminal enterprise* is criminally responsible under principles of accessory liability, a party who gives knowing aid in

some part of the *criminal enterprise* is a criminally responsible party under the Guidelines.") (quotation marks and citation omitted; emphases added); *United States v. Wilson*, 240 F.3d 39, 48 (D.C. Cir. 2001) ("[P]lanning and preparation actually define *an organization* as large or small[.]") (emphasis added); *United States v. Slade*, F.3d 185, 190 n.1 (4th Cir. 2013) (to qualify for aggravating role enhancement, the government must establish that defendant oversaw "participants, as opposed to property, in the *criminal enterprise*.") (emphasis added).

The commentary from the Sentencing Commission and D.C. Circuit (and other) precedent strongly suggest that these role enhancements are applicable to leaders or managers of organizations that have a primary purpose of engaging in crime, such as foreign cartels that smuggle narcotics into the United States, or motorcycle gangs that unlawfully transport and distribute firearms. But neither consulting company associated with Mr. Manafort, DMP and/or DMI, operated as a criminal organization. DMP was a company formed in 2005 to engage in political consulting work, while DMI was a company formed in 2011 to engage in consulting, lobbying, and public relations work for foreign clients. *See* Doc. 419 (Superseding Information) ¶ 7. They were not "criminal organizations" as that phrase is ordinarily understood and, therefore, these enhancements are not applicable in this case.

Furthermore, Mr. Manafort cannot fairly be described as an organizer, leader, manager, or supervisor under USSG § 3B1.1. The government's star witness at Mr. Manafort's trial in the EDVA, Rick Gates, testified that he was the only DMP or DMI employee that engaged in any criminal activity with Mr. Manafort. *See United States v. Manafort*, 19-CR-0083-TSE (E.D.Va. 2018), Trial Tr. at 1097. In fact, the evidence at trial established that Mr. Gates often acted alone, both when dealing with U.S. lenders in connection with the loan applications that underpin the bank fraud conduct, and when handling transfers of funds earned from FARA-related activity and

held offshore, the conduct underpinning the tax and FBAR charges. Mr. Gates operated with little or no management supervision by Mr. Manafort; indeed, at trial Mr. Gates testified that this lack of oversight enabled him to embezzle hundreds of thousands of dollars from Mr. Manafort. *See id.* at 1419. This was not "extensive" criminal activity.

Accordingly, because Mr. Manafort's lobbying and consulting companies were not criminal organizations, and because Mr. Manafort cannot be described as an organizer, leader, manager, or supervisor, the enhancements under USSG § 3B1.1 are inapplicable.

b. Acceptance of Responsibility

Probation has declined to credit Mr. Manafort with accepting responsibility under USSG § 3E1.1. *See* PSR ¶¶ 94, 126. However, Probation's determination in this regard ignores the fact that Mr. Manafort pled guilty prior to trial in this case and accepted responsibility for offense conduct in both this District *and* the EDVA, including the Counts in the EDVA case for which a mistrial was declared. *See* PSR ¶ 22. In fact, Probation has included conduct that Mr. Manafort admitted with regard to the EDVA charges as other acts in this case. *See* PSR ¶¶ 76-83. It would be inconsistent and entirely inequitable to increase Mr. Manafort's Guidelines based on offense conduct he has admitted in connection with the EDVA case, on the one hand, and then, on the other hand, decline to give Mr. Manafort any consideration for accepting responsibility for that conduct.

At the time the PSR was completed, Probation relied on the Special Counsel's argument that, during his cooperative efforts, Mr. Manafort made false statements to the government and the grand jury to support its denial of acceptable of responsibility. *See* PSR ¶ 94. The Court has now ruled that the Special Counsel failed to prove that Mr. Manafort lied about the Mr. Kilimnik's participation in the obstruction of justice conspiracy. Importantly, the claim that Mr. Manafort

lied about the obstruction conspiracy was the only allegation that he had made a false statement relating to the offense conduct acknowledged in the plea. In light of this finding, Mr. Manafort should receive credit for his acceptance of responsibility.

The Court determined that Mr. Manafort made false statements on a handful of topics to the government and the grand jury. As the defense has consistently argued, Mr. Manafort did not intentionally lie to the government or before the grand jury—arguments that Probation, the Special Counsel and this Court have not credited with respect to those three topic areas. Indisputably, however, whether Mr. Manafort was truthful or untruthful during his cooperation meetings regarding those three topics, it does nothing to offset the fact that Mr. Manafort fully accepted responsibility for his conduct when he acknowledged the Statement of the Offenses and Other Acts (Doc. 423) before this Court during his guilty plea hearing. In short, even if Mr. Manafort did not satisfy the cooperation component of his plea agreement, he only hurt himself with respect to a potential 5K motion by the government under the Guidelines. This, however, does not result in an *ipso facto* determination that Mr. Manafort did not accept responsibility for his conduct. He has not backed away from his guilty plea in any way. Accordingly, Mr. Manafort should receive credit pursuant to USSG § 3E1.1 for his acceptance of responsibility.

Finally, acknowledging, without agreeing with, the Court's determination that he made false statements relating to three topics during his cooperation, Mr. Manafort asks the Court to consider the narrow scope of those topics against more than 50 hours that he spent answering the government's questions. Given the relatively small number of alleged false statements in the record in comparison to the defendant's lengthy cooperation sessions, the Special Counsel implicitly accepted the majority of Mr. Manafort's answers as truthful. Thus, despite the Court's determination that the Special Counsel met its burden of proving by a preponderance of the

evidence that Mr. Manafort lied about three of the five topic areas, we ask that the Court weigh its findings in this regard against Mr. Manafort's truthful answers provided during the majority of his cooperation.

c. The Guidelines Overstate the Seriousness of the Offense

As noted above, the Guidelines in this case are largely driven by the "value of funds" provision of USSG § 2S1.3, which, in turn, references the fraud table found at USSG § 2B1.1, which provides for escalating offense categories based on the "loss" that resulted from a defendant's criminal conduct. While the defendant agrees that Probation has calculated the Guidelines correctly in this regard, using the "value of funds" measure results in an advisory sentencing range that bears little relation to the offense conduct here. In other words, neither the U.S. government nor any other victim "lost" an amount equal to the funds that were held by and flowed through the relevant foreign accounts associated with the FARA-related activities, which underpin the money laundering and FBAR conspiracy conduct. Indeed, a substantial portion of the funds held in the relevant foreign accounts were ultimately paid out in fees to professionals that Mr. Manafort engaged, related to legitimate business expenses, or were reported as income on the book and records and tax returns of DMP and DMI. Until recently, the DOJ itself advocated that sentencing courts use the less draconian tax Guidelines in FBAR-related cases, instead of using the value of funds to determine the appropriate offense level.[42] Therefore, while the defense

[42] *See generally* Anton Janik, Jr. *DOJ Announces Major New Shift in Criminal Sentencing in Offshore Tax Matters*, Mitchell Williams (Dec. 8, 2017). (*Available at*: https://www.jdsupra.com/legalnews/doj-announces-major-new-shift-in-39945/. Recently, a DOJ senior trial attorney floated the proposition that DOJ may now argue that USSG § 2S1.3 is the correct Guideline for criminal tax cases involving offshore accounts. To date, however, DOJ has not promulgated any official guidance regarding this proposed change. Indeed, in the very first criminal tax/FBAR case to be sentenced following the "reported" DOJ policy change, the government agreed that the *tax* Guidelines should be applied to the defendant to avoid disparate treatment considering that dozens of prior defendants in criminal tax/FBAR cases had been sentenced under the tax Guidelines. *See United States v. Kim*, Docket No, 1:17-CR-00248-LMB (E.D. Va. 2018).

does not dispute the applicability of USSG §§ 2S1.3 and 2B1.1, the Court should consider under Section 3553(a) the fact that the "value of funds" analysis employed by the Guidelines results in an offense level that vastly overstates the seriousness of the offense in this case.

Lastly, there are no pertinent U.S. Sentencing Commission policy statements.

6. The Need to Avoid Unwarranted Disparities

Among the most important sentencing factors in this case is the need to avoid disparity with the types of sentences imposed in similar cases.

a. Sentences in FARA Cases

As noted above, there have been less than 10 defendants sentenced for violations of FARA over the last 50 years. This is unsurprising, as the government itself has found that "the focus of the FARA Registration Unit's enforcement efforts is encouraging voluntary compliance, rather than pursuing criminal or civil charges." OIG Report *supra* at 9. Nevertheless, examples of sentences imposed in the *de minimis* number of criminal FARA prosecutions within the last decade are instructive and suggest that a sentence involving substantial prison time is not warranted in this case. In *United States v. Siljander*, 07-CR-87-07-W-NKL (W.D. Mo. 2012), the defendant, a former Congressman, was sentenced to one year and one day after pleading guilty to FARA violations and obstruction of justice in connection with work the defendant performed for an Islamic charity with connections to terrorism. In *United States v. Ben Israel*, 13-CR-572 (EEB) (N.D. III. 2014), the defendant was sentenced to 7 months' imprisonment for acting as an unregistered foreign agent in connection with work the defendant performed attempting to lift U.S. sanctions imposed on the Zimbabwean government.

b. Sentences in Offshore Tax and FBAR Cases

As reflected in the PSR, the Guidelines range in this case is largely driven by the fraud table found at USSG § 2B1.1 in connection with the FBAR charges. *See* PSR ¶ 108 (determining a 22-level enhancement for at least $30 million "value of the funds"). In many similar cases, however, variances are frequent and substantial and have reflected the belief of many courts, academics, and commentators that in tax and fraud cases, a mechanical application of these provisions results in astronomically high advisory sentencing ranges that bear little relation to the nature of the offense or the history and characteristics of a defendant.

It has been rare that substantial sentences are imposed in cases related to the use of offshore bank accounts. While offshore tax fraud and FBAR cases do not appear to be common in this District, defendants sentenced in nearby EDVA are instructive. For example, in *United States v. Silva*, Case No. 10-CR-00044 (E.D. Va. 2010), U.S. District Judge Liam O'Grady sentenced the defendant to two years' probation with special conditions of four months' home detention and 100 hours of community service in a case where the defendant repatriated funds from his unreported offshore account into the United States by mailing himself 26 packages of currency and carrying another two packages into the United States, always structured in amounts under $10,000 to avoid detection. In *United States v. Cambata*, Case No. 15-CR-362 (E.D. Va. 2014), U.S. District Judge Claude M. Hilton sentenced the defendant to one year of probation and a $15,000 fine where the defendant received $12 million from a Belizean company which was deposited into an undisclosed account at a Swiss bank in the name of a Hong Kong corporate entity. Thereafter, the funds were later transferred to Singapore and Monaco bank accounts and the defendant failed to file FBARs even after he was advised to do so by counsel. In *United States v. Horsky*, Case No. 16-CR-224 (E.D.Va. 2017), U.S. District Judge T.S. Ellis, III sentenced the defendant, a former business

professor at the University of Rochester, convicted of hiding over $200 million in offshore accounts resulting in an approximate tax loss of $18 million, to seven months' imprisonment followed by a period of supervised release with special conditions. Even more recently, in *United States v. Kim*, Case No. 17-CR-248 (E.D.Va. 2018), U.S. District Judge Leonie M. Brinkema sentenced the defendant to six months' imprisonment for failing to report $28 million in income hidden in a Swiss bank account, using coded messages to communicate with Swiss bankers, and ultimately repatriating his funds by conspiring with a Swiss jeweler to ship jewelry to the United States in an effort to disguise the transfer.

Indeed, variances in tax fraud cases involving the use of foreign accounts have been typical around the country:

- Markus Hager, who maintained multiple offshore accounts in multiple countries held by a sham foreign entity, who used his own sister (a non-U.S. person) to open a secret bank account for him in Israel, and who established new offshore accounts even after he became aware that he was under federal investigation, was sentenced to 6 months' imprisonment. (Case No. 16 Cr. 447 (PKC) (E.D.N.Y. May 31, 2017));

- Ty Warner, who was prosecuted for an undisclosed offshore bank account that held a high balance of over $100,000,000, which resulted in a tax loss of over $5.5 million, but was sentenced to 2 years' probation. (Case No. 13 Cr. 731 (CPK) (N.D. Il. Jan. 14, 2014));

- Mary Estelle Curran, who owned an undisclosed $47 million Swiss bank account which resulted in a $21 million FBAR penalty, was sentenced to *five* (*5) seconds* of probation. (Case No. 12 Cr. 80206 (KLR) (S.D. Fl. Apr. 25, 2013));

- Jacques Wajsfelner, who worked in real estate and advertising, held a Swiss bank account valued at over $5 million and owed more than $400,000 in back taxes, interest, and penalties, but was sentenced to three months home detention based in part on his PTSD stemming from his experiences during World War II (he fled the Nazis as a teenager). (Case No. 12 Cr. 641 (NRB) (S.D.N.Y. Mar. 8, 2013));

- Lothar Hoess, the owner of a company that sold office supplies and equipment, had a tax loss of between $400,000 and $1,000,000, and faced a Guidelines' range of 30 to 37 months, but was sentenced to three years' probation. (Case No. 11 Cr. 154 (SM) (D.N.H. Mar. 30, 2012));

- Arvind Ahuja, who was convicted in jury trial of willfully filing a false return and willfully failing to file an FBAR due to a failure to disclose more than $8.5 million held in bank accounts at HSBC India. At sentencing, the court varied from the Guidelines' range of 41-51 months to a sentence of 3 years' probation, 3 months home detention, a $350,000 fine, and 450 hours community service. (Case No. 11 Cr. 135 (CNC) (E.D. Wisc. Feb. 6, 2013));

- Kenneth Heller, a disbarred attorney who had a secret $25 million account in Switzerland, faced a Guidelines' range of 30-37 months, but was sentenced to 6 weeks' imprisonment. (Case No. 10 Cr. 388 (PKC) (S.D.N.Y. Jan. 23, 2012));

- Michael Reiss, who moved his offshore account to various institutions and countries, failed to participate in the OVDP, and filed false FBARs, faced a Guidelines' range of 30 to 37 months, but was sentenced to 3 years' probation, the first 8 months to be served in a community confinement center, and 30 hours of community service a week for 3 years. (Case No. 11 Cr. 668 (RMB) (S.D.N.Y. Jan. 1, 2011));

- Josephine Bhasin, who had an account at HSBC in India that held a high balance of $8.3 million, and filed a false FBAR after being contacted by the DOJ, was sentenced to 2 years' probation, the first 3 months to be served in home confinement, and 150 hours of community service. (Case No. 11 Cr. 268 (ADS) (E.D.N.Y. Mar. 8, 2013));

- Ernest Vogliano, who opened UBS accounts in the names of Liechtenstein and Hong Kong shell corporations, and actively used funds and transferred some after learning of the criminal investigation, was sentenced to 2 years' probation. (Case No. 10 Cr. 327 (TPG) (S.D.N.Y. Apr. 26, 2011));

- Jules Robbins, who created a sham Hong Kong corporation to be listed as the nominal holder of his UBS accounts that held nearly $42 million. The court took into consideration his "otherwise unblemished life" in imposing a sentence of 12 months' probation. (Case No. 10 Cr. 333 (RJH) (S.D.N.Y. Oct. 8, 2010)); and

- Igor Olenicoff, a businessman and investor, held more than $200 million in undisclosed offshore bank accounts and owed $52 million in back taxes, interest, and penalties, but was sentenced to two years' probation. (Case No. 07 Cr. 227 (CJC) (C.D. Cal. Apr. 16, 2008)).

Even if there were not numerous other factors warranting a sentence substantially below the statutorily-authorized maximum in this case, sentencing Mr. Manafort to prison for many years would create an undeniable and unwarranted disparity in the sentencing treatment of other defendants in offshore tax fraud and FBAR cases. *See* 18 U.S.C. § 3553(a)(6). This factor alone weighs heavily in favor of a sentence that does not include a substantial term of imprisonment,

particularly in light of the time that Mr. Manafort has already served and his agreement to forfeit a substantial portion of his assets.

c. Sentences in Other Cases Related to the Special Counsel's Investigation

Finally, the sentences imposed in the other cases prosecuted by the Special Counsel (or referred by that office to other prosecutors) are also instructive. For example, in *United States v. Cohen*, 18-CR-602/18-CR-850 (WHP) (S.D.N.Y. 2018), defendant Michael Cohen was given a sentence of 36 months' imprisonment after pleading guilty to making false statements to Congress, five counts of tax evasion, one count of falsifying submissions to a bank, and two campaign finance violations. The Special Counsel's prosecutions related to obstruction and false statements are even more instructive. In *United States v. van der Zwann*, 18-CR-31-ABJ (D.D.C. 2018), this Court sentenced the defendant to 30 days' imprisonment for lying to the Special Counsel's attorneys and investigators. In *United States v. Papadopoulos*, 17-CR-182-RDM (D.D.C. 2018), Judge Moss sentenced the defendant to 14 days' imprisonment for making false statements to the FBI. The sentences already imposed in other cases that have been investigated and/or prosecuted by the Special Counsel's Office reflect the fact that courts recognize that these prosecutions bear little to no relation to the Special Counsel's core mandate of investigating allegations that the Trump campaign colluded with the Russian government to influence the 2016 election.

7. The Need to Provide Restitution to Any Victims of the Offense

As noted in the PSR, restitution is not applicable in this case. *See* PSR ¶ 22.

8. A Concurrent Sentence is Appropriate

In its sentencing submission, the Special Counsel's Office states that the Court has discretion to run all or a portion of the sentence imposed in this case consecutively to the sentence imposed in the EDVA case. *See* SCO Memo. at 24. While the Court has substantial discretion,

that discretion is informed by the Sentencing Guidelines, which the Special Counsel ignores. To the extent the Court in the EDVA imposes a term of imprisonment, Mr. Manafort will come before this Court serving an undischarged term of imprisonment and, therefore, the provisions of USSG § 5G1.3 (b) will apply. This Guideline states, in pertinent part, that if "a term of imprisonment resulted from another offense that is relevant conduct to the instant offense" then the Court must "adjust the sentence for any period of imprisonment already served on the undischarged term of imprisonment if [it determines that the Bureau of Prisons will not credit that time]" and "the sentence for the instant offense shall be imposed to run concurrently to the remainder of the undischarged term of imprisonment." USSG § 5G1.3(b)(1)-(2).

In situations involving an undischarged term of imprisonment, USSG § 5G1.3(b) instructs that "relevant conduct" be analyzed pursuant to the provisions of subsections (a)(1), (a)(2), or (a)(3) of USSG § 1B1.3. Those provisions essentially provide that nearly *any* conduct related in *any way* to the charges for which a defendant will be sentenced qualifies as relevant conduct, and includes:

> (1) (A) all acts and omissions committed, aided, abetted, counseled, commanded, induced, procured, or willfully caused by the defendant; and
> (B) in the case of a jointly undertaken criminal activity (a criminal plan, scheme, endeavor, or enterprise undertaken by the defendant in concert with others, whether or not charged as a conspiracy), all acts and omission of others that were—
> (i) within the scope of the jointly undertaken criminal activity,
> (ii) in furtherance of that criminal activity, and
> (iii) reasonably foreseeable in connection with that criminal activity;
> that occurred during the commission of the offense of conviction, in preparation for that offense, or in the course of attempting to avoid detection or responsibility for that offense; [or]
>
> (2) solely with respect to offenses of a character for which § 3D1.2(d) would require grouping of multiple counts, all acts and omissions described in subdivisions (1)(A) and (1)(B) above that were part of the same course of conduct or common scheme or plan as the offense of conviction; [or]

> (3) all harm that resulted from the acts and omissions specified in subsections (a)(1) and (a)(2) above, and all harm that was the object of such act and omissions[.]

See USSG § 1B1.3(a)(1)-(3).

In light of the above provisions, the conduct for which Mr. Manafort will be sentenced in the EDVA case is relevant to the conduct for which he will be sentenced in this District. The Special Counsel's theory from the outset has been that the various types of conduct that Mr. Manafort engaged in were *all* related to each other—that is, Mr. Manafort engaged in FARA activity that he did not properly disclose to the DOJ (*i.e.*, the FARA conduct); he deposited income from the FARA activity into foreign bank accounts that he did not disclose to the government (*i.e.*, the FBAR conduct (prosecuted here and in the EDVA)); he did not report all of the FARA income that he deposited into the foreign accounts (*i.e.*, the tax fraud conduct (prosecuted here and in the EDVA)); he laundered the proceeds of the FARA activity by using the funds from the foreign accounts to pay for goods, services, and real property in the United States (*i.e.*, the money laundering conduct, which is inextricably intertwined with the tax fraud conduct); he used real estate acquired with funds related to the foregoing schemes to commit bank fraud (*i.e.*, the bank fraud conduct, prosecuted in the EDVA and included in the Statement of Offense in this case, *see* Doc. 432); and, lastly, he attempted to contact potential trial witnesses to cover up his criminal conduct (*i.e.*, the obstruction conduct).

The Special Counsel's own sentencing submission makes this point. For example, in discussing the EDVA indictment and trial, the Special Counsel notes that "[a]s with the facts supporting the tax conspiracy charge in the District of Columbia, the substantive tax and FBAR charges [in the EDVA] related to millions in income earned in Ukraine" and goes on to tie that income to the foreign account and bank fraud charges (*i.e.*, noting that relevant loan applications

were related to properties purchased or improved with funds that Mr. Manafort held in foreign accounts). SCO Memo. at 6. The Special Counsel also notes that in the Statement of Offense filed in this District (Doc. 432), Mr. Manafort allocated here to conduct that made up a substantial portion of the evidence against him at the EDVA trial. *See, e.g.*, SCO Memo at 7 (Mr. Manafort's admissions that he used income from FARA activities (and held in foreign accounts) to purchase goods, services, and real estate in the U.S.; Mr. Manafort's admissions that he falsely characterized income as loans; and Mr. Manafort's admissions that he lied to his bookkeepers and accountants as part of a scheme to underreport his income). Indeed, in its summary of the Count One tax and FBAR conspiracy objects, the Special Counsel's Office simply relies on the sentencing memorandum it has filed in the EDVA case, and "notes that the FBAR crimes" prosecuted in the EDVA "served to promote other crimes: the tax conspiracy herein as well as the FARA violations." SCO Memo. at 22.

In short: Mr. Manafort's conduct in this District and his conduct in the EDVA cannot be anything *other* than relevant conduct under USSG § 1B1.3(a)(1)-(3), which includes the Count Two obstruction conduct in this District, *see* USSG § 1B1.3(a)(1)(B) (relevant conduct includes conduct "that occurred during the commission of the offense of conviction, in preparation for that offense, *or in the course of attempting to avoid detection or responsibility for that offense[.]*") (emphasis added). Therefore, in the event that the Court in the EDVA sentences Mr. Manafort to a term of imprisonment, it is appropriate impose a concurrent sentence pursuant to USSG § 5G1.3(b). Lastly, the fact that Mr. Manafort exercised that constitutional right should not result in an overly punitive consecutive sentence.

For these reasons, the defendant requests that this Court should impose a sentence that will run concurrent to any undischarged term of imprisonment that results from the sentence imposed in the EDVA.

CONCLUSION

For all of the foregoing reasons, we respectfully request that the Court impose a sentence significantly below the statutory maximum sentence in this case.

Respectfully submitted,

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